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HARMONIZED SYSTEM
REVIEW SUB-COMMITTEE

-
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POSSIBLE AMENDMENT TO THE NOMENCLATURE
TO CLARIFY THE CLASSIFICATION OF CERTAIN NUTRITIONAL
PREPARATIONS AND RELATED PRODUCTS

(Item II.A.9 on the Agenda)

Reference documents :

41.806 (RSC/17)
41.909 (RSC/17)
41.920, Annex B/7 (RSC/17 - Report)
42.080 (HSC/21)
42.100, Annex F/4 (HSC/21 - Report)
42.226 (RSC/18)
42.231 (RSC/18)
42.500, Annex A/12 (RSC/18 - Report)

I. BACKGROUND

1. At its 18th Session, the Review Sub-Committee continued its examination of the possibility of amending the Nomenclature and the Explanatory Notes to clarify the classification of certain nutritional preparations and related products, based on proposals from the Secretariat and Switzerland.
2. The Secretariat's proposal was based on the view that the creation of a new subheading in heading 21.06 would be the most appropriate solution for grouping certain nutritional preparations in the HS, while Switzerland was of the view that a legal text amendment should aim at classifying in Chapter 30 products which do not have the character of food preparations or beverages. The Swiss Administration, therefore, proposed a new Note 4 to Chapter 30 to reflect this view (paragraph 7 of Doc. 42.231).

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3. After a lengthy discussion, the Chairman concluded that although there seemed to be clear sympathy for the Secretariat proposal, the Sub-Committee had not made a decision as to which of the two proposals should be pursued. With regard to those delegates who had expressed a preference to retain the status quo, he noted that the Secretariat proposal seemed to be more in the right direction. He noted that the proposal could be improved aiming at a definite coverage and providing criteria for distinguishing those products from other food preparations. In this regard, he also felt that the text of heading 21.06, being a residual heading, would need to be amended to specifically provide for the products in question.
4. The Delegate of the EC also suggested that if the Sub-Committee preferred the Secretariat proposal, it might also consider the possibility of creating a new subheading in Chapter 22 for food supplements in the form of beverages.
5. The Sub-Committee finally decided to pursue this question at its next session. The Secretariat was instructed to study the matter further with a view to improving it, especially to provide precise scope and some objective criteria for distinguishing these products from other similar preparations and to prepare the revised proposals (e.g., using criteria such as indications, active ingredients) which would alleviate the difficulties expressed in the meeting. Administrations were also encouraged to submit comments for improving the Swiss proposal on similar lines which would not alter the present scheme of classification of nutritional preparations and related products.

II. SECRETARIAT COMMENTS

6. So far the Secretariat has only received comments from the Swiss Administration. In its comments Switzerland maintains its intention to define the scope of heading 30.04 by amending the Chapter Notes. The new Swiss proposal takes account of some of the comments made at the last session. In particular, it takes account of the criticism that Switzerland's first proposal was too vague in scope (too broad). The terms "restoring, correcting or modifying" have been replaced by "acting on". In addition homeopathic medicines are no longer mentioned as falling in heading 30.04. The Swiss proposal is set out in Annex I to this document.
7. The Swiss Administration also proposes to amend Chapter Note 1 to show more clearly that preparations of a kind intended essentially to appease hunger and thirst are excluded from Chapter 30.
8. The Secretariat appreciates the Swiss Administration's attempt to take account of the comments made at the last session. The new, amended Note 4 to Chapter 30 seems to bring the Swiss view, concerning classification of certain nutritional preparations and related products, more into conformity with the view expressed by the majority of the Committee at its last session, in that the reference to "homeopathic medicaments" is deleted from the original Swiss proposal.
9. It seems, however, that the Swiss Administration still wants to classify in heading 30.04 products which treat symptoms without effecting a cure (see Doc. 42.231, paragraph 9). Whether the replacement of "restoring, correcting or modifying" by "acting on" (organic, physical or psychic functions), modifies the original Swiss proposal is somewhat unclear to the Secretariat. The Swiss Administration is, therefore, invited to enlighten the Committee on this question.

10. As instructed by the Committee (“with a view to improving it especially to provide precise scope and some objective criteria”) the Secretariat has also studied the matter further with a view to improving its original proposal.
11. The Secretariat is still of the opinion that the creation of a new subheading in heading 21.06 is the most appropriate solution to facilitate the classification of the products at issue. In addition, as noted by the Chairman of the Sub-Committee during the last meeting, heading 21.06, being a residual heading, needs to be amended. It is therefore also proposed to insert the text of the subheading in the heading text itself.
12. The definition of such products should, in the Secretariat’s view, still be based on the definitions in the CODEX Alimentarius (Volume 4 - 1994), see paragraph 15 of Doc. 42.226. However, the Secretariat is now of the opinion that part of this definition should be given legal status. The Secretariat, therefore, proposes to insert a Subheading Note in Chapter 21 to reflect this. The new Subheading Note is based on the first part of the Secretariat’s original proposal in Doc. 42.226 concerning the proposed Explanatory Note.
13. In this connection, the Secretariat considers that the proposed amendment to heading 21.06, the new subheading 2106.20 and its corresponding Subheading Note, make it superfluous to insert exclusions in Chapters 9, 12, 13, 15 and 22, as proposed in the Annex to Doc. 42.226. However, the Secretariat maintains its proposal to insert an exclusion in Chapter 30. Furthermore, in the Secretariat’s view, the Sub-Committee should concentrate its efforts on the examination of legal amendments at this stage and, therefore, it has not proposed amendments to the Explanatory Notes.
14. On the above basis, the Secretariat proposes draft amendments to the Nomenclature, as set out in Annex II to this document.

III. CONCLUSIONS

15. The Sub-Committee is therefore requested to decide, whether :
- (1) to retain the status quo, as expressed by several delegates at the last session of the Sub-Committee, entailing no legal amendments;
 - (2) to insert new legal Notes in Chapter 30, as proposed by the Swiss Administration (Annex I);
 - (3) to amend heading 21.06, and to insert a new subheading (2106.20), as proposed by the Secretariat (Annex II);
 - (4) to decide whether a Subheading Note should define the content of the new subheading.
16. In the event that the Sub-Committee prefers (3) (and (4)) in paragraph 15 above, the Sub-Committee is also invited to examine the scope of the new subdivision (in particular, how to classify fish and vegetable oils, herbal teas and beverage-type preparations) and the legal text (see paragraphs 14-19 of Doc. 42.226).

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x x

(SCR/19/mars 99)
(RSC/19/March 99)

ANNEXE I

(Point II.A.9 de l'ordre du jour)

ANNEX I

POSSIBLE AMENDMENT TO THE NOMENCLATURE TO CLARIFY THE CLASSIFICATION OF
CERTAIN NUTRITIONAL PREPARATIONS AND RELATED PRODUCTS

(Item II.A.9 on the Agenda)

ARTICLE 16 PROCEDURE
AMENDMENTS TO THE NOMENCLATURE
PROPOSAL BY THE SWISS ADMINISTRATION

CHAPTER 30.

Note 1.

Note 1, insert new subparagraph (a) and redraft subparagraph (b) as follows :

1. - This Chapter does not cover :
- (a) Products and preparations whose essential function is to appease hunger and thirst, including dietetic, diabetic or fortified foods, even if with added essential or physiologically useful substances (for example, vitamins, active micro-organisms, amino acids, iodine, selected lactic bacteria or ferments, calcium, essential fatty acids, natural fibres, plant extracts) (Section IV);
 - (b) Food supplements (Section IV).

Letters (b) to (g) become (c) to (h).

Insert the following new Note 4 :

"4.- Subject to the provisions of Note 1 to this Chapter, heading 30.04 includes products which are clearly characterized as medicaments, by virtue of their method of administration; by means of written indications (for example, describing their therapeutic or prophylactic properties with regard to specific human or animal diseases or ailments) on the packaging, the immediate container or accompanying notices; or if they are described as being intended for acting on organic, physical or psychic functions in humans or animals."

Present Note 4 becomes Note 5.

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Annexe II au Doc. NR0010B1
Annex to

(SCR/19/mars 99)
(RSC/19/March 99)

ANNEXE II

ANNEX II

POSSIBLE AMENDMENTS TO THE NOMENCLATURE AND
EXPLANATORY NOTES CONCERNING CERTAIN NUTRITIONAL
PREPARATIONS AND RELATED PRODUCTS

(Item II.A.9 on the Agenda)

ARTICLE 16 PROCEDURE
AMENDMENTS TO THE NOMENCLATURE
SECRETARIAT PROPOSAL

Chapter 21.

New subheading Note :

“1.- For the purposes of subheading No. 2106.20, the expression “preparations for special dietary uses (including medical foods and food supplements)” means preparations which are specially processed or formulated to satisfy particular dietary requirements which exist because of, for example, a particular physical or physiological condition.

Existing subheading Notes should be renumbered accordingly.

Heading 21.06.

Delete and substitute :

“21.06 Preparations for special dietary uses (including medical foods and food supplements); food preparations not elsewhere specified or included.”

Insert new subheading :

“2106.20 - Preparations for special dietary uses (including medical foods and food supplements)”

Chapter 30.

Note 1 - replace Note 1 (a) by the following new Note 1 (a) :

“(a) Preparations for special dietary uses (including medical foods, except those for intravenous administration, and food supplements) of heading 21.06 or other foods and beverages (such as tonic beverages and mineral waters) of Section IV.

Existing Notes should be renumbered accordingly.
